

Order

Entered: April 8, 2003

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2003-14

Proposed Amendment of Rules 3 and 4 of the Rules Concerning the State Bar of Michigan

On January 22, 2003, this Court published for comment a proposed amendment of Rule 4 of the Rules Concerning the State Bar of Michigan and, in accompanying text, explained other modifications that it was considering in the dues structure that affects members of the State Bar. (Administrative File No. 2002-38.) The proposal would add a \$15 annual assessment for the Client Protection Fund and gradually increase the annual amount designated for the attorney-discipline system from \$100 to \$140.

The Representative Assembly of the State Bar of Michigan has requested that the Court make several additional changes to Rule 4, some of which also would implicate changes in Rule 3. The Court today is publishing for comment both the Bar's proposal and a version of the proposal that the Court published on January 22, 2003, modified to include alternative changes in the age-exemption provision and some additional new fees, including a requirement that inactive members pay one-half the amount of general dues.

Before determining whether any of these proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all concerning these new matters. The proposals will be considered by the Court along with the comments concerning ADM File No. 2002-38. They also will be on the agenda of the public hearing scheduled for June 19, 2003, with ADM File No. 2002-38. The agenda for the hearing will be posted at www.courts.michigan.gov/supremecourt, with instructions for reserving time to address the Justices in person regarding these matters.

Publication of the proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

REPRESENTATIVE ASSEMBLY'S PROPOSAL

Rule 3 Membership Classes

- (a) Active. [Unchanged.]
- (b) Inactive. An active member may request an inactive classification. An inactive member shall pay annual dues in the amount of one-half the annual dues of an active member. If the member has been inactive for three years or less, the member may later be classified as an active member by
 - (1) [Unchanged.]
 - (2) paying the full amount of annual dues;
 - (3) [Unchanged.]
 - (4) if the member was inactive for more than 3 years or more, the member must reapply for admission, satisfy the Board of Law Examiners that the member currently possesses the requisite character and fitness to practice law, and obtain a certificate from the Board of Law Examiners that the member currently possesses sufficient ability and learning in the law to properly practice as an attorney and counselor in Michigan, and must pay applicable fees and dues. ~~obtaining a certificate from the Board of Law Examiners that the member currently possesses sufficient ability and learning in the law to enable the member to properly practice as an attorney and counselor in Michigan.~~

If the inactive member has been or is currently subject to disciplinary action in another jurisdiction, the application must be referred to the Attorney Discipline Board and action on the application delayed until the board makes a decision.

- (c) - (d) [Unchanged.]

- (e) Resignation. An active or inactive member who is not subject to pending disciplinary action in this state or another jurisdiction may resign from membership by submitting a letter of resignation to the secretary of the State Bar. The secretary shall notify the member when the letter is accepted, whereupon the member no longer will be qualified to practice law in Michigan or eligible for any other member benefits. To be readmitted as a member of the State Bar, a member who has resigned must reapply for admission, satisfy the Board of Law Examiners that the member currently possesses the requisite character and fitness to practice law, obtain a passing score on the Michigan Bar Examination, and pay applicable fees and dues.

Rule 4 Membership Dues

- (a) An active member's dues for each fiscal year (October 1 through September 30), are payable at the State Bar's principal office by October 1 of each year. Effective for the fiscal year beginning October 1, 2003, ~~the~~ dues consist of two components: \$160-200 for State Bar expenses other than the attorney discipline system and an amount to be set annually by the Supreme Court to fund the Attorney Grievance Commission and the Attorney Discipline Board, to be separately stated in the dues notice. Beginning with the 2005 fiscal year, dues shall be automatically increased or decreased on the basis of the Consumer Price Index for Midwest Class A urban wage earners and clerical workers. ~~However, f~~For a member admitted between April 1 and September 30, the fiscal year of admission, dues are one-half of the full-year amount.
- (b) In addition to dues, active and inactive members shall pay an annual \$15 assessment to the Client Protection Fund. For a member admitted between April 1 and September 30, the fiscal year of admission, the assessment is \$7.50.
- ~~(b)~~ (c) Dues notices, including the Client Protection Fund assessment, must be sent to all active members before September 20. A 10-percent \$50 late charge is added to a dues payment postmarked after November 30. The State Bar must send a written notice of delinquency (by registered or certified mail to the last recorded business address) to a member who fails to pay dues by November 30. If the dues and the late charge are not paid within 30 days after the notice is sent, the individual is suspended from

active membership in the State Bar. If an individual is not subject to a disciplinary order and the suspension is for less than 3 years, the member is automatically reinstated on the payment of dues and late charges owing from the date of the suspension to the date of the reinstatement, and an administrative reinstatement fee of \$100. If the suspension is for 3 years or more, the individual must ~~also apply for recertification under Rule 8 for the Board of Law Examiners~~ reapply for admission, satisfy the Board of Law Examiners that the member currently possesses the requisite character and fitness to practice law, obtain a certificate from the Board of Law Examiners that the member currently possesses sufficient ability and learning in the law to properly practice as an attorney and counselor in Michigan, and pay applicable fees and dues.

~~(d) (e)~~ An active member who was born before October 1, 1933, or who is 75 or older does not have to pay dues ~~after becoming 70.~~

(d) - (e) [Relettered but otherwise unchanged.]

SUPREME COURT'S REVISED PROPOSAL

[The changes indicated below would be made to the current version of Rule 3.]

Rule 3 Membership Classes

(a) Active. [Unchanged.]

(b) Inactive. An active member may request an inactive classification. The member may later be classified as an active member by

(1) [Unchanged.]

(2) paying the full amount of annual dues;

(3) - (4) [Unchanged.]

(c) - (d) [Unchanged.]

(e) Withdrawal from membership.

- (i) An active or inactive member may withdraw from membership in the State Bar by notifying the secretary of the State Bar in writing. The secretary shall notify the member when the request is accepted, whereupon the member no longer will be qualified to practice law in Michigan or to receive any other member benefits. The secretary of the State Bar also shall notify the clerk of the Supreme Court of the withdrawal of membership.
- (ii) The withdrawal from membership in the State Bar shall not deprive the Attorney Grievance Commission or the Attorney Discipline Board of jurisdiction over the member.
- (iii) A person who has withdrawn from membership in the State Bar may be readmitted only by
 - (A) submitting an application to the State Bar secretary, along with an affidavit that explains the reasons for the request and demonstrates that there is no reason why membership should be denied;
 - (B) paying the annual dues;
 - (C) demonstrating that no disciplinary action has been taken or is currently pending in this or any other jurisdiction; and
 - (D) obtaining a certificate from the Board of Law Examiners that the applicant currently possesses sufficient ability and learning in the law to properly practice as an attorney and counselor in Michigan, if the applicant's membership has been withdrawn for more than 3 years.

If the applicant has been or is currently subject to disciplinary action in another jurisdiction, the applicant must be referred to the Attorney Discipline Board and action on the application delayed until the board makes a decision.

[The changes indicated below would be made to the version of Rule 4 that was published for comment on January 22, 2003.]

Rule 4 Membership Dues

- (a) ~~An active member's dues for each fiscal year (October 1 through September 30) are payable at the State Bar's principal office by October 1 of each year. The dues consist of three two components that must be paid by all members [OR that must be paid by all members except those who have been members for at least 45 years]: (1) \$15 for the Client Protection Fund administered by the State Bar; , and (2) an amount to be set annually by the Supreme Court to fund the Attorney Grievance Commission and the Attorney Discipline Board; , and (3) In addition, an active member's dues include an amount to be set by the Supreme Court for other State Bar expenses, and an inactive member's dues include one-half that amount.~~ Each component shall be separately listed in the dues notice.
- (b) Dues notices must be sent to all active members before September 20. A ~~10 percent~~ \$50 late charge is will be added to a dues payment postmarked after November 30. The State Bar must send a written notice of delinquency (by registered or certified mail to the last recorded business address) to a member who fails to pay dues by November 30. If the dues and the late charge are not paid within 30 days after the notice is sent, the individual is suspended from active membership in the State Bar. If an individual is not subject to a disciplinary order and the suspension is for less than 3 years, the member ~~is automatically~~ will be reinstated on the payment of dues, a \$100 reinstatement fee, and late charges owing from the date of the suspension to the date of the reinstatement. If the suspension is for 3 years or more, the individual must also apply for recertification under Rule 8 for the Board of Law Examiners.
- (c) ~~An active member does not have to pay dues after becoming 70.~~ A member who is admitted to the State Bar between April 1 and September 30 shall be assessed one-half the full amount of dues for that fiscal year.
- (d) - (e) [Unchanged.]

Staff Comment: On January 22, 2003, the Supreme Court published for comment in ADM File No. 2002-38 a proposed amendment of Rule 4 of the Rules Concerning the State Bar of Michigan. In the introductory text, the Court explained some other modifications that it was considering in the State Bar's dues structure,

including a \$15 annual assessment for the Client Protection Fund and a gradual increase from \$100 to \$140 in the annual amount designated for the attorney-discipline system. The Court also noted that the Representative Assembly of the State Bar had indicated that it would be proposing still more changes. That has now occurred.

In order to promote maximum discussion about the issues presented, the Court is publishing for comment both the proposal from the Representative Assembly and a revised version of the proposal that the Court published on January 22, 2003. Some differences between the two proposals are: (1) the State Bar's proposal would raise the age for a dues exemption from 70 to 75, with a grandfather clause, while the Court's revised proposal either would eliminate the age exemption altogether or relate it to years of membership rather than age; (2) the State Bar's proposal ties future changes in the amount of general dues to the Consumer Price Index, while the Court's proposal does not provide for automatic changes; (3) the State Bar's proposal would allow a member to resign, while the Court's proposal would allow a member to withdraw from membership in the State Bar but not from the jurisdiction of the attorney-discipline entities; and (4) the State Bar's proposal would require members who have resigned to obtain recertification from the Board of Law Examiners, while the Court's proposal provides alternative procedures for those who seek reinstatement within three years of withdrawing from membership. Both proposals would require inactive members to pay one-half the amount of annual general dues.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by June 1, 2003, at P.O. Box 30052, Lansing, MI 48909 or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-14. All comments will be posted on the Supreme Court's website, <http://www.courts.michigan.gov/supremecourt/resources/administrative/index.htm>.